

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MOONBUG ENTERTAINMENT
LIMITED, et al.,

Plaintiffs,

v.

BABYBUS (FUJIAN) NETWORK
TECHNOLOGY CO., LTD, et al.,

Defendants.

Case No. [21-cv-06536-EMC](#)

**ORDER RE WITNESS DISCLOSURES
AND CROSS DISCLOSURES AND
DEPOSITION DESIGNATIONS AND
COUNTERDESIGNATIONS FOR JULY
19, 2023**

Docket Nos. 542, 543

The Court has reviewed Defendants' disclosures, the Plaintiffs' cross disclosures, as well as the parties' objections. The Court makes the following rulings.

IT IS SO ORDERED.

Dated: July 18, 2023



EDWARD M. CHEN
United States District Judge

PLAINTIFFS' OBJECTIONS TO DEFENDANTS' DISCLOSURES

The Court reviewed Plaintiffs' objections and addresses them below.

Witnesses	Trial Exhibit No.	P's Objections	Court's Rulings
Christian Tregillis	Demonstratives provided separately via sendfile link	<p>Slides 51, 65-72: FRE 802, FRCP 26(a)(2)(ii). These slides cite data from RedToolBox.io, a third-party platform aggregating YouTube view data. The specific data from and queries made to RedToolBox were not provided and Moonbug was not able to test or review this data. Defendants cite only to the RedToolBox website as a whole and not an particular webpage within it.</p> <p>Slides 8: FRE 403. The pie charts purportedly reflecting Defendants' revenue and profits for the conceded videos are misleading and lacks citation.</p> <p><u>Babybus' response:</u></p> <p>Slides 51, 65-72 – The Court overruled Plaintiffs' objection to Mr. Tregillis' use of data from RedToolBox, a publicly available source. Dkt. No. 431 at 14 (“To the extent that D has not provided P with RedToolBox data, it appears that the RedToolBox would be publicly available to P. RedToolBox is a publicly available YouTube analytics tool.”).</p> <p>Slides 8, 65-68 – The data regarding the percentage of views for the 6 conceded videos is derived from Schedule 5.1 of the Rebuttal Report of Mr. Tregillis. The pie charts are a proper visual representation of that data.</p>	<p>OVERRULED.</p> <p>For Slide 51, 65-72, the Court has already indicated that it would permit underlying RedToolBox data in its bellwether ruling. Docket No. at 14 (“The Court overrules this objection. While D can introduce this exhibit as a basis for Seiter’s expert opinion and not substantive evidence in itself, Paddock v. Dave Christensen, Inc., 745 F.2d 1254, 1261–62 (9th Cir. 1984), the summary is admissible. . . . To the extent that D has not provided P with RedToolBox data, it appears that the RedToolBox would be publicly available to P. RedToolBox is a publicly available YouTube analytics tool. See Liberty Ins. Underwriters, Inc. v. Davies Lemmis Raphaely L. Corp., 162 F. Supp. 3d 1068, 1073 (C.D. Cal. 2016), aff’d, 708 F. App’x 374 (9th Cir. 2017) (rejecting argument regarding admissibility of exhibit where the exhibit summarized publicly available documents).”).</p> <p>For Slide 8, Babybus should add citations to the charts.</p>
Christian Tregillis	https://www.youtube.com/watch?v=lmH5uq	These are URLs, not exhibits, and should not be admitted into evidence.	JUDGMENT RESERVED. The relevance of Airplane

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	<p>waFq8 https://www.youtube.com/channel/UC8AJgZ1VbK4TAt1ToKj9Ddg/about https://www.youtube.com/watch?v=a-FfgWKfPiw https://www.youtube.com/watch?v=m09tKI4DKPk https://www.youtube.com/watch?v=VZOgl0WqMMU</p>	<p>The following URLs are no longer available on YouTube, and thus Plaintiffs are not able to inspect their contents:</p> <ul style="list-style-type: none"> • https://www.youtube.com/watch?v=m09tKI4DKPk • https://www.youtube.com/watch?v=VZOgl0WqMMU <p>FRE 402/403 – The following URLs are CoComelon videos, but not asserted CoComelon works, and are therefore irrelevant and confusing:</p> <ul style="list-style-type: none"> • https://www.youtube.com/watch?v=lmH5uqwaFq8 • https://www.youtube.com/watch?v=a-FfgWKfPiw <p>802 - Additionally, the URL at https://www.youtube.com/channel/UC8AJgZ1VbK4TAt1ToKj9Ddg/about contain statements made by Defendants and third-party YouTube.</p>	<p>Song and If You're Happy and You Know It Song is unclear.</p>
17 18 19 20 21 22 23 24 25 26 27 28	<p>Christian Tregillis</p> <p>2153 to 2358 BabyBus Invoice/Expense documents</p>	<p>Not disclosed as materials considered as part Mr. Tregillis' reports</p> <p>802 – Statements by third parties and or unspecified persons used for the truth of the matter asserted</p> <p>Dkt. No. 452 – Defendants are precluded from introducing evidence of purported allocations of Defendants' personnel costs and "Mr. Tregillis is precluded from testifying at trial about allocation of purported costs and expenses for the infringing Super JoJo works in the United States."</p> <p><u>Babybus' response:</u></p>	<p>OVERRULED. See report at paragraph 173.</p>

		Slide 55 – The slide regarding expenses does not address allocation of expenses as these expenses are not allocated. These are invoiced costs, not allocated overhead or personnel costs. The Court’s order did not preclude testimony regarding all costs, merely allocated costs (Dkt. No. 452). Likewise, the invoices (Ex. 2153 to 2358) are invoiced and not allocated expenses.	
Christian Tregillis	473 Move and Exercise Song + More Nursery Rhymes & Kids Songs - Super JoJo	Not disclosed as materials considered.	SUSTAINED as to Exercise Song. OVERRULED as to More Nursery Rhymes and Kids Songs.
Christian Tregillis	Expert Report of Denise Denson	Dkt. 431 (Order re Bellwether Objections to Exhibits) (“Expert reports are inadmissible hearsay and thus not independently admissible. See Hunt v. City of Portland, 599 F. App’x 620, 621 (9th Cir. 2013)).	SUSTAINED.
Christian Tregillis	3287 Saperstein Report Ex. F	FRE 401/403; Mr. Saperstein is not offering an opinion at trial.	SUSTAINED.
Christian Tregillis	Rebuttal Report of Christian Tregillis	As applied to all disclosures relating to the expert reports of Christian Tregillis, including Exs. 3322-3372, 3514-3515: Moonbug objects generally to the admission of schedules that Mr. Tregillis or his team prepared. The schedules/exhibits are inadmissible hearsay. Mr. Tregillis is free to proffer an opinion without the admission of his report schedules/exhibits. See Dkt. 432 at 4-5. Moonbug generally objects to every schedule which lacks citation to documents, including because such schedules reflect information not relied upon by Mr. Tregillis and/or not produced in discovery. Dkt. 431 (Order re Bellwether Objections to Exhibits) (“Expert	OVERRULED.

		reports are inadmissible hearsay and thus not independently admissible. See Hunt v. City of Portland, 599 F. App'x 620, 621 (9th Cir. 2013)).	
Christian Tregillis	3346, 3347 – Schedule 7.6, 7.6.1 to Rebuttal Report of Christian Tregillis	No citation, appears to cite evidence not produced in discovery.	JUDGMENT RESERVED, pending citation of evidence.
Christian Tregillis	3348-3353 Schedule 8.1-8.3.1 to Rebuttal Report of Christian Tregillis	These schedules (Exs. 3348-3352), and any other document including purportedly allocated costs are in violation of Dkt. 452 (“The parties are precluded from introducing any evidence of purported allocations of Defendants’ personnel costs relating to Super JoJo” and “Mr. Tregillis is precluded from testifying at trial about allocation of purported costs and expenses for the infringing Super JoJo works in the United States”).	SUSTAINED.
Christian Tregillis	3354 -- Schedule 8.4.1 to Rebuttal Report of Christian Tregillis	This schedule, and any other document including purportedly allocated costs are in violation of Dkt. 452 (“The parties are precluded from introducing any evidence of purported allocations of Defendants’ personnel costs relating to Super JoJo” and “Mr. Tregillis is precluded from testifying at trial about allocation of purported costs and expenses for the infringing Super JoJo works in the United States”).	SUSTAINED.
Christian Tregillis	3357 -- Schedule S.1 to Rebuttal Report of Christian Tregillis	FRE 403 (data produced by Google incomplete).	OVERRULED, provided that Babybus is clear about the scope of the data Tregillis does rely upon.
Christian Tregillis	Revised Supplement Report of Christian Tregillis	Dkt. 431 (Order re Bellwether Objections to Exhibits) (“Expert reports are inadmissible hearsay and thus not independently admissible. See Hunt v. City of Portland, 599 F. App'x 620, 621 (9th Cir. 2013)).	SUSTAINED.

Christian Tregillis	3358-3372, 3514-3515 -- Schedules to Rebuttal Report of Christian Tregillis	FRE 403 (data produced by Google incomplete).	OVERRULED, provided that Babybus is clear about the scope of the data Tregillis does rely upon.
Christian Tregillis	3436-3455 Summaries of CCM views and damages	<p>For Exs. 3436-3455, Various "Summaries": FRE 1006, 40/403, 802.</p> <p>These documents were not produced in discovery. These summaries lack citation and there is no reference as to where the underlying data originates from. It is also unclear if these summaries are in Mr. Tregillis' report but it appears there is no reference to these in his report by any identifiable.</p> <p><u>Babybus' response:</u></p> <p>Exhibits 3437-3451 – These are proper 1006 summaries of voluminous YouTube data. Defendants will provide the sources underlying the data reflected in these exhibits.</p>	JUDGMENT RESERVED, pending citation of underlying evidence.
Ellen Seiter	Slides 14–16, 34–36, 40, 43, 46, 57–61	<p>Outside scope of report. Slides are inconsistent with and mischaracterize Dr. Seiter's actual chart from her report, provided at Ex. 3389. Plaintiffs are amenable to Defendants' using Ex. 3389 for demonstrative purposes for these slides.</p> <p>Examples of Defendants altering Dr. Seiter's opinion in the slides include:</p> <ul style="list-style-type: none"> Dr. Seiter's chart in her expert report expressly cited videos that post-dated CoComelon with dates, and the slides do not include this information, which 	OVERRULED-IN-PART and SUSTAINED-IN-PART. Seiter appears to consider the content of these slides in her expert report (p. 251). Seiter's slides must be consistent with the chart at p.253-256 of her report, as Moonbug has listed. Her report discusses Little Baby Bum, LooLoo Kids, ChuChu TV, Little Angel, Videogyan and BillionSurprise Toys at page 251. The chart at p.253 has a question mark for the "eyebrows" row for Little Angel, at p.254 that Jack Jack only walks in a 2018 movie, at p. 255 that the Incredibles did not check

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		<p>makes the chart misleading and prejudicial.</p> <ul style="list-style-type: none"> • Dr. Seiter’s chart did not include the images that are in the slides, which are cropped and do not reflect that character for which her checkmarks apply. For example,, she used multiple different iterations from different time periods for Jack-Jack, Little Angel, LooLoo Kids, and others to establish the checked elements. It is misleading and prejudicial to allow Dr. Seiter to suggest that the character images in her slide meet all the elements. • Slide 14 – Displays checkmark for “thin rounded opaque eyebrows” for Little Angel, while report has a question mark and explanation that the eyebrows in Little Angel changed to be more similar to CoComelon’s JJ. • Slide 15 – Dr. Seiter’s chart in her report makes clear that Pixar’s Jack-Jack only walks in a video in 2018, which post-dates JJ, but this information is omitted from the slide. • Slides 34–35, 40, 43, 46, 57–61 – Misleadingly omits Dr. Seiter’s analysis regarding Pixar’s the Incredibles. For example, Slide 40 	<p>all the boxes, and at p.256 Dave and Ava do not have chunky hairstyles. Other animated shows may be relevant to show genre.</p>
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1		<p>makes it appear that Dr. Seiter checked all the boxes, when in fact she did not find these elements in Pixar's the Incredibles.</p> <ul style="list-style-type: none"> • Slide 34 – Dr. Seiter's opinion (seen in Ex. 3389) was that Dave and Ava does not have chunky hairstyles, but this slide changes her opinion to include a checkmark for Dave and Ava in this category. 	
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10		FRE 402 Not relevant to	
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13		which includes all the	
14		characters, many of which the	
15		elements come from after JJ.	
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17		FRE 403 misleading suggestion	
18		that this information is about	
19		prior art, when Ms. Seiter's	
20		chart in her expert report	
21		expressly cited videos that post-	
22		dated CoComelon, see also Ex.	
23		3389, and Dr. Seiter admitted in	
24		deposition she did not know the	
25		timelines. See, e.g, Seiter	
26		Depo. 200: 21-24, 201:3-21.	
27		See Ex. 3389);	
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		FRE 1006 – not evidence,	
		images and analysis cited to	
		only to summary not underlying	
		evidence (<i>See</i> Bellwether ruling	
		sustaining objection to Ex. 3390	
		for failure to provide specific	
		cites and timestamps, Dkt. 431	
		at 12);	
		FRE 106/403 Unfair	
		representation of cropped,	
		incomplete third party works	

		(see Dkt. 472 at 4 (sustaining objection to cropped images)). <u>Babybus’ response:</u> None of Plaintiffs’ objections to Dr. Seiter’s slides have merit. All of this information was disclosed in Dr. Seiter’s report. Slides 14-16, 34-36, 40, 43, 46, 57-61 are all disclosed (see 11/22/22 Seiter Report at p. 251) . . . Plaintiffs’ objections to materials post-dating March 2017 lacks merit; such works are still relevant to Dr. Seiter’s opinions that certain elements are generic and commonplace.	
Ellen Seiter	Slides 19, 20, 23	Outside scope of report. The slides reflect opinions and charts not disclosed in Dr. Seiter’s report. <i>Compare, e.g.</i> , Seiter Report at pg. 243 with Slide 19 (Dr. Seiter’s report never claims “similar head shape” of the emoji, and opines that the emoji has “thin lips,” which is not reflected in the slide) and Ex. 3389. 402/403 – Not proper rebuttal opinion because it does not use all of Mr. Krause’s elements and gives the misleading impression that all elements are met when they are not. The elements stated by Dr. Sieter also mischaracterize the elements described by Mr. Krause.	OVERRULED.
Ellen Seiter	Slide 25	Outside scope of report. These are not the elements or the images referred to in Dr. Sieter’s report, nor are they the ones used by Mr. Krause and so are improper rebuttal. See	OVERRULED. Seiter appears to consider the content of these slides in her expert report.

		<p>Report at 199 (comparing completely different images). The Court already ruled that Seiter cannot compare CoComelon works to Super JoJo works. Dkt. 413 at 13-14 (“The Court GRANTS the motion in limine to exclude expert testimony on liability and comparisons between the works, which are not included in the expert report. Moonbug presents evidence that the three experts have expressly cabined their expert opinion. See Docket No. 291-1 (Seiter Report) at 1 (not comparing the CoComelon works to the Super JoJo works).”</p> <p>402/403 – Comparing these differences misleading and not the proper extrinsic analysis, which is an analysis of similarities and not differences.</p>	
Ellen Seiter	Slides 26–27	<p>FRE 106/403 Unfair representation of cropped images. (see Dkt. 472 at 4 (sustaining objection to cropped images)).</p> <p>These are not images from Dr. Seiter’s report, and she provided no analysis or opinion of these images.</p>	
Ellen Seiter	Slide 28	Dr. Seiter did not disclose any opinion regarding JJ’s age, or any opinion contradicting Mr. Krause’s testimony. Testimony in question related to a document outside the asserted works.	SUSTAINED. Seiter discusses generally the age of its intended viewers, but never the age of JJ.
Ellen Seiter	Slide 29	This slide refers to a document that Dr. Seiter did not disclose in her materials considered and	

		for which she offered no opinion. This slide is also objectionable for the same reasons as Slide 28.	
Ellen Seiter	Slide 38	<p>This slide was not timely disclosed—Defendants presented this slide to Moonbug for the first time on July 18 at 12:43 pm.</p> <p>Expresses opinions not disclosed in Dr. Seiter’s report (e.g., Dr. Seiter does not mention “Rain Rain Go Away” in her report).</p>	SUSTAINED.
Ellen Seiter	Slide 39	<p>402/403 - Any testimony or suggestion that these works precede CoComelon is misleading (403) and outside the scope of report, Dr. Seiter admitted in deposition she did not know the timelines and no timeline is claimed here. See, e.g, Seiter Depo. 200: 21-24, 201:3-21. Further, picking and choosing a smattering of individual family members from different families is misleading because Plaintiffs are asserting a combination, and nowhere in this slide is an entire family depicted.</p> <p>FRE 1006 – not evidence, analysis not cited to exhibits (<i>See</i> Bellwether ruling sustaining objection to Ex. 3390 for failure to provide specific cites and timestamps, Dkt. 431 at 12); FRE 106/403 Unfair representation of cropped, incomplete third party works (see Dkt. 472 at 4 (sustaining objection to cropped images)). Defendants stated while meeting and conferring that</p>	OVERRULED. Seiter can opine on the protectability of the Mom, Dad, Sister, Brother with images of prior family characters to establish genre. Babybus has cited the work that each image is from.

		they would add citations to this slide, but they did not do so.	
Ellen Seiter	Slide 42	Dr. Seiter does not express an opinion regarding the cinematography of this video, much less “Short to medium length shots,” “Frequent camera movements,” and “Indirect lighting”.	OVERRULED.
Ellen Seiter	Slide 63	Analysis of color, speaking quality, character acting and movement, and subtitles beyond scope report; 802/403 (suggestion that this is prior art based on hearsay, and asserted date contradicts report, see Report at 128).	OVERRULED.
Ellen Seiter	7/6/23 Lee Trial Tr. at 391:5-11	Trial transcripts are not evidence. Defendants failed to include the transcript text as required by the Court: Q. Do you have an understanding that head shape and eye size both come from a universal understanding of cuteness? A. Yes, those are elements of it. Q. And that having a bigger head and a disproportionate body where the head is bigger than the body, that those are images that help portray cuteness in this genre? A. Yes, the combination of such elements.	SUSTAINED.
Ellen Seiter	7/12/23 Krause Trial Tr. at 848:17-21	Trial transcripts are not evidence. Defendants failed to include the transcript text as required by the	SUSTAINED.

		<p>Court.</p> <p>One of the things you mentioned was that JJ does things like sing and dance and walk beyond his age; yes?</p> <p>A. Yes.</p> <p>Q. JJ is three and a half years old; right?</p> <p>A. Not that I know of.</p>	
Ellen Seiter	Fran Krause Trial Demonstratives, pp. 1, 2	Defendants have not identified whether this refers to Plaintiffs' or Defendants' demonstrative. Moonbug objects to the extent that these slides were not used in the examination or precluded by the Court.	JUDGEMENT RESERVED. Demonstratives not evidence but can be commented upon.
Ellen Seiter	Fran Krause Opening Report	802 - this is an expert report and inadmissible hearsay. The Court ruled re Ex. 1035 that "Expert reports are inadmissible hearsay and thus not independently admissible." Dkt. 431 at 4. P also objects on FRE 106 incompleteness grounds to the extent D seeks to admit incomplete portions of the report, and P reserves right to introduce relevant remainder.	SUSTAINED.
Ellen Seiter	2860, 2862, 2864, 2869, 2871, 2875, 2877, 2879, 2885, 2887, 2889, 2891, 2897, 2899, 2901, 2903, 2905, 2930, 2937, 2951, 2952, 2954-2964, 2966, 2993, 2995-3005, 3007-3012, 3489-3491 -- Screenshots of third party / YouTube video webpages that assert publication	<p>403/802 (publication dates)</p> <p>Also, beyond the scope of Dr. Seiter's opinion because the timing of when a particular video was uploaded did not factor into Dr. Seiter's analysis, as she admitted in deposition. See, e.g, Seiter Depo. 200: 21-24, 201:3-21.</p>	OVERRULED.

	date. Additional objections re these individual exhibits are below.		
Ellen Seiter	3402, 3407, 3408, 3412-3415, 3418, 3420, 3422 -- Dr. Seiter Video Comparison Summaries	802; Exhibit fails to list underlying documents; improper hearsay derived from expert report; additional hearsay information on dates of the videos; underlying videos not in evidence. Court ruled re Ex. 3408 (Bellwether) that D could only “introduce this exhibit as a basis for Seiter’s expert opinion and not substantive evidence in itself.” Dkt. 431 at 13.	SUSTAINED. Can be used as demonstratives.
Ellen Seiter	3389 -- Summary Re Elements	<p>802/1006 - This is not merely a summary of documents, but represents Dr. Seiter’s characterization and opinion regarding that evidence from her report. It should not be admissible and substantive evidence.</p> <p>402/403 – Document expressly cites videos and characters that post-date CoComelon’s JJ character, and so are not relevant and would tend to confuse and mislead the jury regarding the genre at the time JJ was developed. Dr. Seiter admitted in deposition she did not know the timelines. See, e.g, Seiter Depo. 200: 21-24, 201:3-21.</p> <p><u>Babybus’ response:</u></p> <p>The Court has already found the summary chart (see TE 3389) is admissible (see Dkt 403 at 14).</p>	SUSTAINED. Can be used as a demonstrative.

Ellen Seiter	1250 -- CoCoverse Mini Bible June 16th Deck.pdf	Outside scope of Dr. Seiter's report (not in materials considered).	SUSTAINED.
Ellen Seiter	2948 -- This Is The Way Nursery Rhymes Baby Songs Children Rhyme video	Not disclosed in materials considered by Dr. Seiter.	SUSTAINED.
Ellen Seiter	3487 -- https://support.google.com/youtube/answer/10774223 ["Best practices for kids and family content" Youtube page]	802	OVERRULED.
Ellen Seiter	3492 -- Google Best Practices for Children's Content (PDF), collected from: https://storage.googleapis.com/support-kms-prod/wv7iBuPJJzjAgmFA4pzwPVKEIRkGFelonG3L .	802; Not in materials considered.	SUSTAINED.
Ellen Seiter	3502 -- 6/30/2023 Business Records Certification of Google LLC	Outside scope of Dr. Seiter's report (not in materials considered).	SUSTAINED.

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' CROSS-DISCLOSURES

The Court reviewed Defendants' objections and addresses them below.

Witnesses	Deposition Designation	D's Objections	Court's Rulings
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1	Ellen Seiter	The November 22, 2022 report of Dr. Seiter and all appendices	Dkt. 431 (Order re Bellwether Objections to Exhibits) (“Expert reports are inadmissible hearsay and thus not independently admissible. <i>See Hunt v. City of Portland</i> , 599 F. App’x 620, 621 (9th Cir. 2013)).	JUDGMENT RESERVED, possibly used for impeachment.
2	Ellen Seiter	All demonstratives previously used by either party.	Insufficient disclosure of unidentified demonstrative materials. BabyBus reserves all prior objections. If Plaintiffs are permitted to use these, Defendants also reserve the right to use these demonstratives, including in their direct examination.	OVERRULED. Both parties are permitted to use them.
3	Ellen Seiter	Ex. 207 - Depo Ex. 207 - Opening Expert Report of Fran Krause with all exhibits/appendices	802, 402, 403, Dkt. 431 (Order re Bellwether Objections to Exhibits) (“Expert reports are inadmissible hearsay and thus not independently admissible. <i>See Hunt v. City of Portland</i> , 599 F. App’x 620, 621 (9th Cir. 2013)).	SUSTAINED.
4	Ellen Seiter	Ex. 210 - Depo Ex. 210 - Rebuttal Report of Fran Krause with all exhibits/appendices	802, 402, 403, Dkt. 431 (Order re Bellwether Objections to Exhibits) (“Expert reports are inadmissible hearsay and thus not independently admissible. <i>See Hunt v. City of Portland</i> , 599 F. App’x 620, 621 (9th Cir. 2013)).	SUSTAINED.
5	Christian Tregillis	Babybus: “Given the current pace of the proceedings, it is unlikely the parties will reach Mr. Tregillis’ testimony by July 19, 2023. If helpful to the Court, and with leave, BabyBus is prepared to continue conferring with Moonbug on the following objections, and disclose a revised list the day before Mr. Tregillis is expected to testify.		